

EXHIBIT D

From: [Gregory J. Dubinsky](#)
To: [Martin, Bill](#); [Andrew C. Indorf](#)
Cc: [Rudzin, Abby F.](#); [Quinn, Brian P.](#); [Matthew Gurgel](#); [Aditi Shah](#); [Pollack, Alan](#); [Filardo, Thomas](#); [Ennis, Felicia](#); [Thumim, Leron](#); [James Wes Christian](#); [Ardalan Attar](#)
Subject: Re: Harrington Global Opportunity Fund, Limited v. BofA Securities, Inc., et al., 1:21-cv-00761-LGS (S.D.N.Y.)
Date: Wednesday, May 15, 2024 11:33:08 AM
Attachments: [MERRILL_nasdaq_dark.xlsx](#)

Bill:

Thanks for the information you provided.

After receipt of your email, we conducted further analysis and have located a tiny fraction of orders that contain odd-lot sizes (less than 1% of the total market events). We are still puzzled by this seeming aberration. Please let us know whether Merrill make inquiries into this issue and, if so, by when we can expect a response.

We note that you chose not to respond to our request below regarding account IDs. After further analysis, we understand that at least 1.4 million market events are seemingly missing account IDs. These events are attributable to 6 client IDs, which we can provide you. We do not understand why the data lack account IDs for so many market events. Please let us know whether Merrill make inquiries into this issue and, if so, by when we can expect a response.

As for your requests for examples, I do not understand what you are requesting in relation to the foregoing. That said, please see attached what we understand to be an exemplar Merrill Nasdaq order that was hidden [REDACTED]. I provide this in good faith even though you have refused to look into this issue.

Thanks,
Greg

Gregory J. Dubinsky
HOLWELL SHUSTER & GOLDBERG LLP
Office: (646) 837-8554 | [Bio](#)
425 Lexington Ave | New York, New York 10017 | [hsgllp.com](#)

From: Martin, Bill <wmartin@omm.com>

Date: Tuesday, May 14, 2024 at 11:00 AM

To: Gregory J. Dubinsky <gdubinsky@hsgllp.com>, Andrew C. Indorf
<aindorf@hsgllp.com>

Cc: Rudzin, Abby F. <arudzin@omm.com>, Quinn, Brian P. <bquinn@omm.com>, Matthew Gurgel <mgurgel@hsgllp.com>, Aditi Shah <AShah@hsgllp.com>, Pollack, Alan <APollack@wbny.com>, Filardo, Thomas <TFilardo@wbny.com>, Ennis, Felicia <FEnnis@wbny.com>, Thumim, Leron <lthumim@wbny.com>, James Wes Christian <jchristian@christianattarlaw.com>, Ardalan Attar <aattar@christianattarlaw.com>

Subject: RE: Harrington Global Opportunity Fund, Limited v. BofA Securities, Inc., et al.,
1:21-cv-00761-LGS (S.D.N.Y.)

Greg,

For the three bullet points in your May 12 email about Merrill's data, as well as Harrington's May 7 request that Merrill identify which orders were "instructed to be hidden," it is difficult to ascertain exactly what you're describing based on your emails or what you said during our meet-and-confer on May 10. During our meet-and-confer, I suggested that you provide examples from Merrill's data that you believe illustrate the issues you are raising so that we can better understand Harrington's requests. I don't believe we have received those examples yet.

In any case, we are seeing examples of odd lot sizes for orders in both the customer order data produced on December 8, 2023, as well as the [REDACTED] order data produced thereafter, so we believe that you are incorrect in stating that such orders do not exist in Merrill's order data. In addition, for pegged orders, it is our understanding that any update in price occurs on the trading venue to which the order was routed. In other words, the executing broker would not continually cancel and replace its order in response to changes in the pegged value. If you have information to the contrary, you may want to share that information with us.

Yesterday evening, you added yet another request to these four requests. Harrington is now also requesting that Merrill identify whether venues to which it routed orders were "lit" or "dark," despite the fact that you stated in your May 7 email that Harrington already generally has this information.

If you insist on seeking court intervention now on your May 7 request, we believe the Joint Statement should state the following and, in accordance with LR 37.1, include as an Exhibit the full text of RFP 1 and our Response and Objections:

JOINT STATEMENT: The parties met and conferred on May 10 by videoconference for an hour but were unable to resolve their dispute regarding Harrington's May 7 request that Merrill produce additional data showing whether each client order was, in Harrington's words, "instructed to be hidden or displayed" when sent to an exchange or other venue. The parties do not agree on whether this constitutes a new request to which Merrill need not respond.

William J. Martin
O: +1-212-728-5942
C: +1-917-582-2461
wmartin@omm.com

From: Gregory J. Dubinsky <gdubinsky@hsgllp.com>

Sent: Monday, May 13, 2024 5:16 PM

To: Martin, Bill <wmartin@omm.com>; Andrew C. Indorf <aindorf@hsgllp.com>

Cc: Rudzin, Abby F. <arudzin@omm.com>; Quinn, Brian P. <bquinn@omm.com>; Matthew Gurgel <mgurgel@hsgllp.com>; Aditi Shah <AShah@hsgllp.com>; Pollack, Alan <APollack@wbny.com>;

Filardo, Thomas <TFilardo@wbny.com>; Ennis, Felicia <FEnnis@wbny.com>; Thumim, Leron <lthumim@wbny.com>; James Wes Christian <jchristian@christianattarlaw.com>; Ardan Attar <aattar@christianattarlaw.com>

Subject: RE: Harrington Global Opportunity Fund, Limited v. BofA Securities, Inc., et al., 1:21-cv-00761-LGS (S.D.N.Y.)

[EXTERNAL MESSAGE]

In addition, we assume that your position that data showing whether Merrill orders were displayed or hidden constitutes a new request extends also to data showing whether the venues to which Merrill orders were sent were “lit” or “dark.” Please tell us if that is not correct.

Gregory J. Dubinsky

HOLWELL SHUSTER & GOLDBERG LLP

Office: (646) 837-8554 | [Bio](#)

425 Lexington Ave | New York, New York 10017 | [hsgllp.com](#)

From: Gregory J. Dubinsky <gdubinsky@hsgllp.com>

Sent: Sunday, May 12, 2024 8:57 PM

To: Martin, Bill <wmartin@omm.com>; Andrew C. Indorf <aindorf@hsgllp.com>

Cc: Rudzin, Abby F. <arudzin@omm.com>; Quinn, Brian P. <bquinn@omm.com>; Matthew Gurgel <mgurgel@hsgllp.com>; Aditi Shah <AShah@hsgllp.com>; Pollack, Alan <APollack@wbny.com>; Filardo, Thomas <TFilardo@wbny.com>; Ennis, Felicia <FEnnis@wbny.com>; Thumim, Leron <lthumim@wbny.com>; James Wes Christian <jchristian@christianattarlaw.com>; Ardan Attar <aattar@christianattarlaw.com>

Subject: Re: Harrington Global Opportunity Fund, Limited v. BofA Securities, Inc., et al., 1:21-cv-00761-LGS (S.D.N.Y.)

Counsel:

As you know, we seek to ensure Plaintiff has—as it is entitled to—complete and accurate trade and order data that permits it to track the order book positions of Merrill’s clients, including all messages that influence a client’s standing on any venue and on any order book as well as their holdings. This also includes which order book positions were available to those tracking publicly accessible markets, exchanges, and venues.

As discussed with you May 10, we ask that you look into the following issues in respect of your client trade and order data production.

- The data you provided appear to be missing at least tens of thousands of account IDs.
- The data you provided do not appear to contain order information as to any order quantities that do not end in “00.”
- The data you provided do not appear to have cancel-replace order events for “pegged orders,” i.e., orders pegged to a particular value. One would expect to see cancel-replace order events for pegged order as the pegged value changes.

Please let us know immediately whether you will look into the issues discussed above.

We have your position that Merrill regards data regarding whether Merrill customer orders were displayed or hidden as supposedly a “new request.” Please provide comments on the following joint statement:

JOINT STATEMENT: The parties met and conferred on May 10 by videoconference but were unable to resolve their dispute regarding whether Merrill will agree to produce data sufficient to show whether Merrill client orders were instructed to be hidden or displayed when sent to exchanges and/or any other venue. The parties did not agree on whether this constitutes a “new request” to which Merrill need not respond.

As always, we reserve all rights.

Thanks,

Greg

Gregory J. Dubinsky

HOLWELL SHUSTER & GOLDBERG LLP

Office: (646) 837-8554 | [Bio](#)

425 Lexington Ave | New York, New York 10017 | [hsgllp.com](#)

From: Martin, Bill <wmartin@omm.com>

Sent: Thursday, May 9, 2024 2:31:53 PM

To: Gregory J. Dubinsky <gdubinsky@hsgllp.com>; Andrew C. Indorf <aindorf@hsgllp.com>

Cc: Rudzin, Abby F. <arudzin@omm.com>; Quinn, Brian P. <bquinn@omm.com>; Matthew Gurgel <mgurgel@hsgllp.com>; Aditi Shah <AShah@hsgllp.com>; Pollack, Alan <APollack@wbny.com>; Filardo, Thomas <TFilardo@wbny.com>; Ennis, Felicia <FEnnis@wbny.com>; Thumim, Leron <lthumim@wbny.com>; James Wes Christian <jchristian@christianattarlaw.com>; Ardalan Attar <aattar@christianattarlaw.com>

Subject: RE: Harrington Global Opportunity Fund, Limited v. BofA Securities, Inc., et al., 1:21-cv-00761-LGS (S.D.N.Y.)

Again, we disagree. We have no obligation to respond to new requests, so we will not accede to your demand that we come prepared with responses as if we did. You, by contrast, need to explain how this is not a new request—and we don’t think that obligation is satisfied by Harrington merely citing a broad request for every single document about Concordia—and why Harrington is entitled to raise this issue now, given that our objections and the fact that Merrill would not produce this information have been clear since June 2022.

William J. Martin
O: +1-212-728-5942
C: +1-917-582-2461
wmartin@omm.com

From: Gregory J. Dubinsky <gdubinsky@hsgllp.com>
Sent: Thursday, May 9, 2024 12:19 PM
To: Martin, Bill <wmartin@omm.com>; Andrew C. Indorf <aindorf@hsgllp.com>
Cc: Rudzin, Abby F. <arudzin@omm.com>; Quinn, Brian P. <bquinn@omm.com>; Matthew Gurgel <mgurgel@hsgllp.com>; Aditi Shah <AShah@hsgllp.com>; Pollack, Alan <APollack@wbny.com>; Filardo, Thomas <TFilardo@wbny.com>; Ennis, Felicia <FEnnis@wbny.com>; Thumim, Leron <lthumim@wbny.com>; James Wes Christian <jchristian@christianattarlaw.com>; Ardalan Attar <aattar@christianattarlaw.com>
Subject: Re: Harrington Global Opportunity Fund, Limited v. BofA Securities, Inc., et al., 1:21-cv-00761-LGS (S.D.N.Y.)

[EXTERNAL MESSAGE]

We will pencil that time in. Our communications to you have been clear in regard to what we are seeking and what RFP it is covered by. This data is relevant because, among other things, whether an order is flagged as visible may pertain to whether it is part of a spoofing scheme. Please be prepared to address (1) whether you dispute the relevance of this data, and why; (2) the burden, if any, in obtaining and producing it; and (3) by when you can commit to producing it. We do not want yet another iteration in which Merrill comes unprepared to a meet and confer to discuss any point in respect of relevance, burden, or timing.

Gregory J. Dubinsky
HOLWELL SHUSTER & GOLDBERG LLP
Office: (646) 837-8554 | [Bio](#)
425 Lexington Ave | New York, New York 10017 | hsgllp.com

From: Martin, Bill <wmartin@omm.com>
Sent: Thursday, May 9, 2024 10:18:35 AM
To: Gregory J. Dubinsky <gdubinsky@hsgllp.com>; Andrew C. Indorf <aindorf@hsgllp.com>
Cc: Rudzin, Abby F. <arudzin@omm.com>; Quinn, Brian P. <bquinn@omm.com>; Matthew Gurgel <mgurgel@hsgllp.com>; Aditi Shah <AShah@hsgllp.com>; Pollack, Alan <APollack@wbny.com>; Filardo, Thomas <TFilardo@wbny.com>; Ennis, Felicia <FEnnis@wbny.com>; Thumim, Leron <lthumim@wbny.com>; James Wes Christian <jchristian@christianattarlaw.com>; Ardalan Attar <aattar@christianattarlaw.com>
Subject: RE: Harrington Global Opportunity Fund, Limited v. BofA Securities, Inc., et al., 1:21-cv-00761-LGS (S.D.N.Y.)

Let's plan on 6:30. If the deposition appears to be running long, I will let you know.

William J. Martin
O: +1-212-728-5942
C: +1-917-582-2461
wmartin@omm.com

From: Gregory J. Dubinsky <gdubinsky@hsgllp.com>
Sent: Thursday, May 9, 2024 10:09 AM

To: Martin, Bill <wmartin@omm.com>; Andrew C. Indorf <aindorf@hsgllp.com>
Cc: Rudzin, Abby F. <arudzin@omm.com>; Quinn, Brian P. <bquinn@omm.com>; Matthew Gurgel <mgurgel@hsgllp.com>; Aditi Shah <AShah@hsgllp.com>; Pollack, Alan <APollack@wbny.com>; Filardo, Thomas <TFilardo@wbny.com>; Ennis, Felicia <FEnnis@wbny.com>; Thumim, Leron <lthumim@wbny.com>; James Wes Christian <jchristian@christianattarlaw.com>; Ardalan Attar <aattar@christianattarlaw.com>
Subject: Re: Harrington Global Opportunity Fund, Limited v. BofA Securities, Inc., et al., 1:21-cv-00761-LGS (S.D.N.Y.)

[EXTERNAL MESSAGE]

Can you please offer a specific time or times?

Gregory J. Dubinsky
HOLWELL SHUSTER & GOLDBERG LLP
Office: (646) 837-8554 | [Bio](#)
425 Lexington Ave | New York, New York 10017 | hsgllp.com

From: Martin, Bill <wmartin@omm.com>
Sent: Thursday, May 9, 2024 10:07:11 AM
To: Gregory J. Dubinsky <gdubinsky@hsgllp.com>; Andrew C. Indorf <aindorf@hsgllp.com>
Cc: Rudzin, Abby F. <arudzin@omm.com>; Quinn, Brian P. <bquinn@omm.com>; Matthew Gurgel <mgurgel@hsgllp.com>; Aditi Shah <AShah@hsgllp.com>; Pollack, Alan <APollack@wbny.com>; Filardo, Thomas <TFilardo@wbny.com>; Ennis, Felicia <FEnnis@wbny.com>; Thumim, Leron <lthumim@wbny.com>; James Wes Christian <jchristian@christianattarlaw.com>; Ardalan Attar <aattar@christianattarlaw.com>
Subject: RE: Harrington Global Opportunity Fund, Limited v. BofA Securities, Inc., et al., 1:21-cv-00761-LGS (S.D.N.Y.)

We disagree. We're available to meet and confer tomorrow after Danny Guy's deposition is completed.

William J. Martin
O: +1-212-728-5942
C: +1-917-582-2461
wmartin@omm.com

From: Gregory J. Dubinsky <gdubinsky@hsgllp.com>
Sent: Wednesday, May 8, 2024 6:21 PM
To: Martin, Bill <wmartin@omm.com>; Andrew C. Indorf <aindorf@hsgllp.com>
Cc: Rudzin, Abby F. <arudzin@omm.com>; Quinn, Brian P. <bquinn@omm.com>; Matthew Gurgel <mgurgel@hsgllp.com>; Aditi Shah <AShah@hsgllp.com>; Pollack, Alan <APollack@wbny.com>; Filardo, Thomas <TFilardo@wbny.com>; Ennis, Felicia <FEnnis@wbny.com>; Thumim, Leron <lthumim@wbny.com>; James Wes Christian <jchristian@christianattarlaw.com>; Ardalan Attar <aattar@christianattarlaw.com>
Subject: Re: Harrington Global Opportunity Fund, Limited v. BofA Securities, Inc., et al., 1:21-cv-

00761-LGS (S.D.N.Y.)

[EXTERNAL MESSAGE]

Bill, this is not a "new request," but an apparent deficiency in your production. As you know, we disagree that you substantially completed production when you certified as much. You do not say that the data is not relevant, not covered by an RFP, or burdensome for Merrill to produce.

Pursuant to the parties' discovery agreement, please provide a time to meet and confer this week.

Thanks,
Greg

Gregory J. Dubinsky
HOLWELL SHUSTER & GOLDBERG LLP
Office: (646) 837-8554 | [Bio](#)
425 Lexington Ave | New York, New York 10017 | [hsgllp.com](#)

From: Martin, Bill <wmartin@omm.com>
Sent: Wednesday, May 8, 2024 4:17 PM
To: Gregory J. Dubinsky <gdubinsky@hsgllp.com>; Andrew C. Indorf <aindorf@hsgllp.com>
Cc: Rudzin, Abby F. <arudzin@omm.com>; Quinn, Brian P. <bquinn@omm.com>; Matthew Gurgel <mgurgel@hsgllp.com>; Aditi Shah <AShah@hsgllp.com>; Pollack, Alan <APollack@wbny.com>; Filardo, Thomas <TFilardo@wbny.com>; Ennis, Felicia <FEnnis@wbny.com>; Thumim, Leron <lthumim@wbny.com>; James Wes Christian <jchristian@christianattarlaw.com>; Ardan Attar <aattar@christianattarlaw.com>
Subject: RE: Harrington Global Opportunity Fund, Limited v. BofA Securities, Inc., et al., 1:21-cv-00761-LGS (S.D.N.Y.)

Merrill substantially completed its data production more than two months ago. We are not entertaining new requests, which are in any event prohibited by the Court's December 18 order.

William J. Martin
O: +1-212-728-5942
C: +1-917-582-2461
wmartin@omm.com

From: Gregory J. Dubinsky <gdubinsky@hsgllp.com>
Sent: Tuesday, May 7, 2024 5:38 PM
To: Martin, Bill <wmartin@omm.com>; Andrew C. Indorf <aindorf@hsgllp.com>
Cc: Rudzin, Abby F. <arudzin@omm.com>; Quinn, Brian P. <bquinn@omm.com>; Matthew Gurgel <mgurgel@hsgllp.com>; Aditi Shah <AShah@hsgllp.com>; Pollack, Alan <APollack@wbny.com>; Filardo, Thomas <TFilardo@wbny.com>; Ennis, Felicia <FEnnis@wbny.com>; Thumim, Leron

<lthumim@wbny.com>; James Wes Christian <jchristian@christianattarlaw.com>; Ardalan Attar <aattar@christianattarlaw.com>

Subject: RE: Harrington Global Opportunity Fund, Limited v. BofA Securities, Inc., et al., 1:21-cv-00761-LGS (S.D.N.Y.)

[EXTERNAL MESSAGE]

Counsel:

Although we can determine whether the venues/exchanges on which orders were placed were generally “lit” or “dark,” the trade and order data you produced does not appear to indicate whether each order was flagged as a visible order or a hidden order. Is this data that exists and is within your possession, custody, or control? Please let us know if you are willing to search for and produce documents that would provide this information, which is plainly covered by RFP No. 1 (“All Documents and Communications concerning Merrill’s trading and order activity in Concordia’s shares on U.S. and Canadian exchanges, alternative trading systems and any other trading venue”). Thank you.

Best,
Greg

Gregory J. Dubinsky
HOLWELL SHUSTER & GOLDBERG LLP
Office: (646) 837-8554 | [Bio](#)
425 Lexington Ave | New York, New York 10017 | [hsgllp.com](#)

CONFIDENTIALITY WARNING: This email may contain privileged or confidential information and is for the sole use of the intended recipient(s). Any unauthorized use or disclosure of this communication is prohibited. If you believe that you have received this email in error, please notify the sender immediately and delete it from your system.